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FIRST GENERAL COUNSEL'S REPORT

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DATE COMPLAINT FILED: 08/10/2016

DATE OF NOTIFICATION: 08/15/2016

LAST RESPONSE RECEIVED: 09/01/2016

DATE ACTIVATED: 09/22/2016

ELECTION CYCLE: 2016

EXPIRATION OF SOL: 03/26/2020 – 06/29/2020

COMPLAINANT:

Campaign Legal Center, J. Gerald Hebert

RESPONDENTS:

American Pacific International Capital, Inc.
Right to Rise USA and Charles R. Spies in his
official capacity as treasurer

Wilson Chen

Huaidan Chen

Gordon Tang

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30121(a)(1)(A), (B)

52 U.S.C. § 30121(b)(1)

11 C.F.R. § 110.20(b), (c), (g), (h), (i)

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that American Pacific International Capital, Inc., ("APIC") a United States subsidiary of a foreign corporation, Jag Pacific, Ltd., and three of its principals violated Section 30121 of the Federal Election Campaign Act of 1971, as amended (the "Act"), by contributing \$1.3 million to Right to Rise USA. The Complaint bases its allegation on an assertion that foreign nationals Gordon Tang ("Tang") and Huaidan Chen, majority owners of Jag Pacific, Ltd., participated in the decision to contribute. Respondents assert that the decision

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1 to contribute was made solely by APIC Executive Director Wilson Chen, a United States citizen,
2 and the contributions were therefore not prohibited foreign national contributions.

3 As set forth below, the available record includes credible information that Tang and
4 Huaidan Chen participated in the decision to contribute to Right to Rise. It appears, therefore,
5 that the contributions may have been impermissible foreign national contributions. Accordingly,
6 the Office of General Counsel recommends that the Commission find reason to believe that
7 APIC, Wilson Chen, Huaidan Chen, and Tang each violated Section 30121(a). We also
8 recommend that the Commission authorize the use of compulsory process, as necessary, in
9 connection with an investigation of this matter. Finally, we recommend that the Commission
10 take no action at this time as to the recipient, Right to Rise USA.

11 II. FACTUAL BACKGROUND

12 APIC is a privately held California corporation owned by Jag Pacific, Ltd., a foreign
13 corporation.¹ APIC describes itself as a "diversified international investment holding company
14 with businesses throughout the US and China."² Tang and Huaidan Chen are Chinese nationals
15 who own a majority interest in Jag Pacific, Ltd.³ According to APIC's website, Tang is the
16 Chairman/President of APIC's corporate board, and Huaidan Chen is a board member.⁴ Wilson

¹ Response of APIC, Wilson Chen, Huaidan Chen, and Gordon Tang ("APIC Resp.") at 2 (Sept. 1, 2016).

² See <http://www.apicincus.com/>.

³ APIC Resp. at 2.

⁴ See <http://www.apicincus.com/>.

10 *Id.*

1 the sole decision-maker with respect to these political contributions.”¹¹ The APIC Respondents
2 also dispute *The Intercept* article’s translation of Tang’s quoted statement, asserting that Tang
3 actually said “Wilson said to donate, so it was done.”¹² According to the APIC Respondents,
4 Tang was made aware of APIC’s contributions to Right to Rise USA only after the contributions
5 were made.¹³ The APIC Respondents further assert that the funds used to contribute to Right to
6 Rise USA came from a specific ledger account that was maintained within APIC’s operating
7 account; this ledger account was assertedly established for the purpose of making political
8 contributions and funded by U.S. revenue.¹⁴ The joint response states that the ledger account
9 was funded, at least in part, by APIC’s January 30, 2015, sale of the KOIN Tower in Portland,
10 Oregon, and that this sale generated a net profit of more than \$11 million, a portion of which was
11 directed to the ledger account.¹⁵

12 Right to Rise USA asserts that the Commission did not have the authority to name it as a
13 respondent when it was not originally identified as one in the Complaint and that, in any event,
14 no allegations have been made against it that constitute a violation of the Act.¹⁶

15 III. LEGAL ANALYSIS

16 The Act and Commission regulations prohibit a foreign national from making a
17 contribution, directly or indirectly, in connection with a federal, state, or local election.¹⁷ A

¹¹ APIC Resp., Zhang Aff. ¶ 6.

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ Right to Rise USA Response at 1-2 (Aug. 30, 2016).

¹⁷ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

1 "foreign national" is an individual who is not a citizen of the United States or a national of the
2 United States and who is not lawfully admitted for permanent residence.¹⁸ The Commission's
3 regulations provide that a "foreign national shall not direct, dictate, control, or directly or
4 indirectly participate in the decision-making process of any . . . corporation . . . with regard to . . .
5 election-related activities."¹⁹ This prohibition includes "decisions concerning the making of
6 contributions, donations, expenditures, or disbursements."²⁰ It is also unlawful for a person to
7 provide substantial assistance "in the solicitation, making, acceptance, or receipt" of an unlawful
8 foreign contribution.²¹ The Act further prohibits persons from soliciting, accepting, or receiving
9 a contribution or donation from a foreign national.²²

10 A domestic subsidiary or affiliate of a foreign national corporation is permitted to make
11 contributions (when corporate contributions are otherwise permitted) if the funds are generated
12 solely by their domestic operations²³ and if no foreign nationals are involved in the decision to
13 make the contribution.²⁴ In Advisory Opinion 2000-17, the Commission allowed the domestic

¹⁸ 52 U.S.C. § 30121(b)(2). The term "foreign national" also includes "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

¹⁹ 11 C.F.R. § 110.20(i).

²⁰ *Id.*

²¹ 11 C.F.R. § 110.20(h).

²² 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

²³ See Advisory Op. 2006-15 (TransCanada); Advisory Op. 1992-16 (Nansay); Advisory Op. 1989-20 (Kuilima).

²⁴ See 11 C.F.R. § 110.20(i); Advisory Op. 2006-15; see, e.g., MUR 6093 (Transurban Grp.), F&LA at 3-4. The Commission has specifically determined that "no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions." Advisory Op. 1989-20 at 2; see, e.g., MUR 6093, F&LA at 4 (the Act was violated where foreign

1 subsidiary of a foreign company to form a "special committee" with the authority to establish
2 and administer a separate segregated fund because that committee was comprised only of U.S.
3 citizens or permanent resident aliens residing in the United States.²⁵ Where decision-making
4 authority is vested with U.S. citizens or permanent resident aliens, foreign national corporate
5 board members must not determine who will exercise decision-making authority.²⁶ This ensures
6 the exclusion of foreign nationals from direct or indirect participation in the decision-making
7 process related to election-related activities.²⁷

8 In this matter, the APIC Respondents assert that the contributions to Right to Rise were
9 funded solely by APIC's domestic operations. They submitted an affidavit from CFO Zhang
10 stating that the subject funds were generated in the United States.²⁸ Zhang specifically avers that
11 APIC maintains a separate ledger account for APIC's political contributions, which is funded
12 entirely from U.S.-derived resources, and that the aforementioned KOIN Tower sale helped to
13 fund that account.²⁹ No information in the record contradicts these assertions.

14 The available information shows, however, that foreign nationals may have been
15 involved in making the contributions to Right to Rise because the APIC board of directors,
16 which included foreign national directors, apparently approved Wilson Chen's proposal to

company's board of directors directly participated in determining whether to continue the political contributions policy of its U.S. subsidiaries); MUR 6184, F&LA at 6-7 (Skyway Concession Company, LLC) (the Act was violated where a foreign national CEO participated in the subsidiary's election-related activities by vetting the campaign solicitations forwarded to him by the company's relations consultant or deciding which nonfederal committees would receive contributions from the company).

²⁵ Advisory Op. 2000-17 at 2-6 (Extendicare Health Services, Inc.).

²⁶ See Advisory Op. 2000-17; Advisory Op. 1990-8 (CIT Group Holdings, Inc.); MUR 3460 (Sports Shinko Co., Ltd.), F&LA at 11.

²⁷ See Advisory Op. 2006-15 at 5-6; MUR 3460, F&LA at 11.

²⁸ APIC Resp., Zhang Aff. ¶ 3.

²⁹ *Id.* at 4; Zhang Aff. ¶¶ 3-5.

1 contribute. Wilson Chen reportedly acknowledged to *The Intercept* that "I proposed to make a
2 donation to the Republican Party and then let the board of directors approve it before sending the
3 donation."³⁰ The APIC Respondents do not deny the accuracy of this quote and they do not deny
4 that the board may have approved the payment. The joint response, in fact, makes little mention
5 of the board at all and provides no explanation of its role in the governance of the company or in
6 making contributions. The APIC Respondents explain that Wilson Chen was the "sole decision-
7 maker with respect to these political contributions" and assert that he functioned as a "special
8 committee" with sole decision-making authority over all political contributions."³¹ But this
9 explanation does not exclude the possibility that in his role as decision-maker he nevertheless
10 sought board approval for the payment. The joint response also denies that foreign national
11 board member Tang was involved in the contribution, but it makes no similar denial with respect
12 to the other known foreign national director, Huaidan Chen. When considered in its totality,
13 therefore, the joint response does not overcome the allegation of board involvement in the
14 making of the payment.

15 Under these circumstances, including the lack of a clear disavowal of Wilson Chen's
16 quoted statement that APIC's board — which includes foreign nationals — participated in the

³⁰ *Supra*-note 9.

³¹ APIC Resp. at 5, Zhang Aff. ¶ 6. Wilson Chen did not personally attest to his decision-making authority — the sworn declaration that Wilson Chen was the sole decision-maker comes from APIC's CFO and not from Wilson Chen himself. Further, even if Wilson Chen was vested with decision-making authority for the Right to Rise contributions, or for contributions generally, the available information indicates that Tang may have played a role in vesting him with that authority. See Advisory Op. 1990-8; Advisory Op. 2000-17 at 5-6; MUR 3460, F&LA at 11 (explaining that foreign national corporate board members must abstain from voting on matters concerning an SSF, "including the selection of individuals to operate the SSF and to exercise decision making authority regarding contributions and expenditures."). While the response is silent on who may have vested Wilson Chen with the asserted authority, or how, the response establishes that Tang did have a role in setting general parameters for Wilson Chen to follow. In particular, the response asserts that Tang provided Wilson Chen with a "general directive" that "all political contributions must be legal and within the financial ability of the company, so as not to impact company operations." APIC Resp. at 4.

1 decision-making by approving APIC's \$1.3 million in contributions, there is reason to believe
2 that APIC, Wilson Chen, Huaidan Chen, and Gordon Tang violated the Act's foreign national
3 contribution ban. Therefore, we recommend that the Commission find reason to believe that
4 APIC violated 52 U.S.C. § 30121(a)(1)(A) by making a foreign contribution, that Gordon Tang
5 and Huaidan Chen violated 52 U.S.C. § 30121(a)(1)(A) by participating in decisions involving
6 election-related activities, and that Wilson Chen violated 52 U.S.C. § 30121(a)(1)(A) by
7 knowingly providing substantial assistance to a foreign national for the purpose of making a
8 prohibited contribution.

9 As to Right to Rise USA, we do not believe that the available information provides the
10 Commission with a sufficient reason to believe, at this time, that it violated the foreign
11 contribution ban by knowingly accepting a foreign national contribution.³² Nonetheless, in the
12 absence of any substantive denial from Right to Rise USA, and in light of the proposed
13 investigation, we recommend that the Commission take no action at this time with regard to
14 Right to Rise USA.

15 **IV. PROPOSED DISCOVERY**

16 This proposed investigation would inquire into the circumstances of the contributions in
17 order to determine whether the foreign nationals on APIC's board participated in APIC's
18 decision to contribute to Right to Rise USA. We would also inquire into APIC's relationship
19 with its parent in order to determine the broader circumstances of Wilson Chen's authority over
20 political contributions. Although we plan to utilize informal investigative methods, we
21 recommend that the Commission authorize the use of compulsory process, including orders to

³² See 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

submit written answers and subpoenas to produce documents, which we would use in the event the parties do not cooperate in providing this information.

V. RECOMMENDATIONS

1. Find reason to believe that American Pacific International Capital, Inc., violated 52 U.S.C. § 30121(a)(1)(A);
2. Find reason to believe that Gordan Tang and Huaidan Chen violated 52 U.S.C. § 30121(a)(1)(A);
3. Find reason to believe that Wilson Chen violated 52 U.S.C. § 30121(a)(1)(A);
4. Take no action at this time as to Right to Rise USA and Charles R. Spies in his official capacity as treasurer;
5. Approve the attached Factual and Legal Analysis;
6. Authorize the use of compulsory process, as necessary; and
7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

12-21-16
Date

Kathleen M. Guith
Kathleen M. Guith
Acting Associate General Counsel for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Christopher L. Edwards
Christopher L. Edwards
Attorney

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:: American Pacific International Capital, Inc. MUR 7122
Wilson Chen
Huaidan Chen
Gordon Tang

I. INTRODUCTION

The Complaint alleges that American Pacific International Capital, Inc., ("APIC") a United States subsidiary of a foreign corporation, Jag Pacific, Ltd., and three of its principals violated Section 30121 of the Federal Election Campaign Act of 1971, as amended (the "Act"), by contributing \$1.3 million to Right to Rise USA. The Complaint bases its allegation on an assertion that foreign nationals Gordon Tang ("Tang") and Huaidan Chen, majority owners of Jag Pacific, Ltd., participated in the decision to contribute.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

APIC is a privately held California corporation owned by Jag Pacific, Ltd., a foreign corporation.¹ APIC describes itself as a "diversified international investment holding company with businesses throughout the US and China."² Tang and Huaidan Chen are Chinese nationals who own a majority interest in Jag Pacific, Ltd.³ According to APIC's website, Tang is the Chairman/President of APIC's corporate board, and Huaidan Chen is a board member.⁴ Wilson

¹ Response of APIC, Wilson Chen, Huaidan Chen, and Gordon Tang ("APIC Resp.") at 2 (Sept. 1, 2016).

² See <http://www.apicincus.com/>.

³ APIC Resp. at 2.

⁴ See <http://www.apicincus.com/>.

1 Chen, a United States citizen, is the Executive Director of APIC and also sits on its board.⁵

2 According to APIC, Wilson Chen oversees APIC's United States operations.⁶

3 Right to Rise USA is an independent expenditure-only committee that supported Jeb
4 Bush's 2016 presidential campaign.⁷

5 The Complaint's allegation stems from two contributions that APIC made to Right to
6 Rise USA: \$1,000,000 on March 26, 2015, and \$300,000 on June 29, 2015.⁸ The Complaint
7 cites to an article from the online publication *The Intercept*, quoting statements made by Wilson
8 Chen and Tang regarding the contributions.⁹ The relevant portion of that article states:

9 According to Chen, 'I proposed to make a donation to the
10 Republican Party and then let the board of directors approve it
11 before sending the donation.' APIC's board includes Chen himself
12 and Neil Bush, both U.S. citizens, but also Chinese citizens Tang
13 and Huaidan Chen. For Tang's part, when asked why APIC made
14 the donation to Right to Rise USA, he responded: 'Wilson said to
15 donate, so I did, I don't really mind.'¹⁰

16 APIC, Tang, Huaidan Chen, and Wilson Chen (collectively "APIC Respondents")
17 provided a joint response to the Complaint. The joint response includes an affidavit from
18 Jennifer Zhang ("Zhang"), APIC's chief financial officer, which attests that "Wilson Chen was

⁵ APIC Resp. at 2. According to the Complaint, the board also includes Neil Bush, a United States citizen, and Jinshan Mao, the board's Vice President, whose nationality is not stated in the record. Compl. at 4.

⁶ APIC Resp. at 2.

⁷ See <https://www.facebook.com/RighttoRiseUSA/>.

⁸ Compl. at 4, see also Right to Rise USA 2015 Amended Mid-Year Report at 837, 1,400 (May 20, 2016). Right to Rise USA refunded \$152,230 to APIC on May 2, 2016. See Right to Rise USA 2016 June Monthly Report at 682 (June 20, 2016).

⁹ See Compl. at 4-5 quoting Schwarz, Jon and Fang, Lee, *The Citizens United Playbook: How a Top GOP Lawyer Guided a Chinese-Owned Company into U.S. Presidential Politics*, THE INTERCEPT (Aug. 3, 2016), available at <https://theintercept.com/2016/08/03/gop-lawyer-chinese-owned-company-us-presidential-politics/>.

¹⁰ *Id.*

1 the sole decision-maker with respect to these political contributions.”¹¹ The APIC Respondents
2 also dispute *The Intercept* article’s translation of Tang’s quoted statement, asserting that Tang
3 actually said “Wilson said to donate, so it was done.”¹² According to the APIC Respondents,
4 Tang was made aware of APIC’s contributions to Right to Rise USA only after the contributions
5 were made.¹³ The APIC Respondents further assert that the funds used to contribute to Right to
6 Rise USA came from a specific ledger account that was maintained within APIC’s operating
7 account; this ledger account was assertedly established for the purpose of making political
8 contributions and funded by U.S. revenue.¹⁴ The joint response states that the ledger account
9 was funded, at least in part, by APIC’s January 30, 2015, sale of the KOIN Tower in Portland,
10 Oregon, and that this sale generated a net profit of more than \$11 million, a portion of which was
11 directed to the ledger account.¹⁵

12 B. Legal Analysis

13 The Act and Commission regulations prohibit a foreign national from making a
14 contribution, directly or indirectly, in connection with a federal, state, or local election.¹⁶ A
15 “foreign national” is an individual who is not a citizen of the United States or a national of the
16 United States and who is not lawfully admitted for permanent residence.¹⁷ The Commission’s
17 regulations provide that a “foreign national” shall not direct, dictate, control, or directly or

¹¹ APIC Resp., Zhang Aff. ¶ 6.

¹² *Id.* at 5.

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¹⁶ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

¹⁷ 52 U.S.C. § 30121(b)(2). The term “foreign national” also includes “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.” 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

1 indirectly participate in the decision-making process of any . . . corporation . . . with regard to . . .
2 election-related activities.”¹⁸ This prohibition includes “decisions concerning the making of
3 contributions, donations, expenditures, or disbursements.”¹⁹ It is also unlawful for a person to
4 provide substantial assistance “in the solicitation, making, acceptance, or receipt” of an unlawful
5 foreign contribution.²⁰ The Act further prohibits persons from soliciting, accepting, or receiving
6 a contribution or donation from a foreign national.²¹

7 A domestic subsidiary or affiliate of a foreign national corporation is permitted to make
8 contributions (when corporate contributions are otherwise permitted) if the funds are generated
9 solely by their domestic operations²² and if no foreign nationals are involved in the decision to
10 make the contribution.²³ In Advisory Opinion 2000-17, the Commission allowed the domestic
11 subsidiary of a foreign company to form a “special committee” with the authority to establish
12 and administer a separate segregated fund because that committee was comprised only of U.S.

¹⁸ 11 C.F.R. § 110.20(i).

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²¹ 52 U.S.C. § 30121(a)(2). The Commission’s regulations employ a “knowingly” standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

²² See Advisory Op. 2006-15 (TransCanada); Advisory Op. 1992-16 (Nansay); Advisory Op. 1989-20 (Kuilima).

²³ See 11 C.F.R. § 110.20(i); Advisory Op. 2006-15; see, e.g., MUR 6093 (Transurban Grp.), F&LA at 3-4. The Commission has specifically determined that “no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions.” Advisory Op. 1989-20 at 2; see, e.g., MUR 6093, F&LA at 4 (the Act was violated where foreign company’s board of directors directly participated in determining whether to continue the political contributions policy of its U.S. subsidiaries); MUR 6184, F&LA at 6-7 (Skyway Concession Company, LLC) (the Act was violated where a foreign national CEO participated in the subsidiary’s election-related activities by vetting the campaign solicitations forwarded to him by the company’s relations consultant or deciding which nonfederal committees would receive contributions from the company).

1 citizens or permanent resident aliens residing in the United States.²⁴ Where decision-making
2 authority is vested with U.S. citizens or permanent resident aliens, foreign national corporate
3 board members must not determine who will exercise decision-making authority.²⁵ This ensures
4 the exclusion of foreign nationals from direct or indirect participation in the decision-making
5 process related to election-related activities.²⁶

6 In this matter, the Respondents assert that the contributions to Right to Rise were funded
7 solely by APIC's domestic operations. They submitted an affidavit from CFO Zhang stating that
8 the subject funds were generated in the United States.²⁷ Zhang specifically avers that APIC
9 maintains a separate ledger account for APIC's political contributions, which is funded entirely
10 from U.S.-derived resources, and that the aforementioned KOIN Tower sale helped to fund that
11 account.²⁸ No information in the record contradicts these assertions.

12 The available information shows, however, that foreign nationals may have been
13 involved in making the contributions to Right to Rise because the APIC board of directors,
14 which included foreign national directors, apparently approved Wilson Chen's proposal to
15 contribute. Wilson Chen reportedly acknowledged to *The Intercept* that "I proposed to make a
16 donation to the Republican Party and then let the board of directors approve it before sending the
17 donation."²⁹ The APIC Respondents do not deny the accuracy of this quote and they do not deny
18 that the board may have approved the payment. The joint response, in fact, makes little mention

²⁴ Advisory Op. 2000-17 at 2-6 (Extendicare Health Services, Inc.).

²⁵ See Advisory Op. 2000-17; Advisory Op. 1990-8 (CIT Group Holdings, Inc.); MUR 3460 (Sports Shinko Co., Ltd.), F&LA at 11.

²⁶ See Advisory Op. 2006-15 at 5-6; MUR 3460, F&LA at 11.

²⁷ APIC Resp., Zhang Aff. ¶ 3.

²⁸ *Id.* at 4; Zhang Aff. ¶¶ 3-5.

²⁹ *Supra* note 9.

1 of the board at all and provides no explanation of its role in the governance of the company or in
2 making contributions. The APIC Respondents explain that Wilson Chen was the “sole decision-
3 maker with respect to these political contributions” and assert that he functioned as a “‘special
4 committee’ with sole decision-making authority over all political contributions.”³⁰ But this
5 explanation does not exclude the possibility that in his role as decision-maker he nevertheless
6 sought board approval for the payment. The joint response also denies that foreign national
7 board member Tang was involved in the contribution, but it makes no similar denial with respect
8 to the other known foreign national director, Huaidan Chen. When considered in its totality,
9 therefore, the joint response does not overcome the allegation of board involvement in the
10 making of the payment.

11 Under these circumstances, including the lack of a clear disavowal of Wilson Chen’s
12 quoted statement that APIC’s board — which includes foreign nationals — participated in the
13 decision-making by approving APIC’s \$1.3 million in contributions, there is reason to believe
14 that APIC, Wilson Chen, Huaidan Chen, and Gordon Tang violated the Act’s foreign national
15 contribution ban.

16 Therefore, the Commission finds reason to believe that APIC violated 52 U.S.C.
17 § 30121(a)(1)(A) by making a foreign contribution, that Gordon Tang and Huaidan Chen

³⁰ APIC Resp. at 5, Zhang Aff. ¶ 6. Wilson Chen did not personally attest to his decision-making authority — the sworn declaration that Wilson Chen was the sole decision-maker comes from APIC’s CFO and not from Wilson Chen himself. Further, even if Wilson Chen was vested with decision-making authority for the Right to Rise contributions, or for contributions generally, the available information indicates that Tang may have played a role in vesting him with that authority. *See* Advisory Op. 1990-8; Advisory Op. 2000-17 at 5-6; MUR 3460, F&LA at 11 (explaining that foreign national corporate board members must abstain from voting on matters concerning an SSF, “including the selection of individuals to operate the SSF and to exercise decision making authority regarding contributions and expenditures.”). While the response is silent on who may have vested Wilson Chen with the asserted authority, or how, the response establishes that Tang did have a role in setting general parameters for Wilson Chen to follow. In particular, the response asserts that Tang provided Wilson Chen with a “general directive” that “all political contributions must be legal and within the financial ability of the company, so as not to impact company operations.” APIC Resp. at 4.

- 1 violated 52 U.S.C. § 30121(a)(1)(A) by participating in decisions involving election-related
- 2 activities, and that Wilson Chen violated 52 U.S.C. § 30121(a)(1)(A) by knowingly providing
- 3 substantial assistance to a foreign national for the purpose of making a prohibited contribution.

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